AGENDA ITEM 8

DISCUSSION AND CONSIDERATION OF ADOPTING AMENDMENTS TO TITLE 16, CCR SECTIONS 4110, 4112, 4120, 4121, 4123, AND 4127.

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on July 29, 2013.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the CBOT. The request must be received in the Board office not later than 5:00 pm on July 15, 2013.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.28, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

The Board is the regulatory entity that regulates the practice of occupational therapy in the State of California. Existing law, BPC section 2570.25, mandates protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions.

Policy Statement Overview

This proposed regulatory action clarifies and implements Assembly Bills AB1588 (Chapter 742, Statues 2012) pertaining to temporary license renewal exemptions for California licensed occupational therapy practitioners that are on active duty in the military when their license expires and AB 1904 (Chapter 399, Statutes 2012) pertaining to expedited licensing for applicants who are married to, or in a legal union with, an active duty member of the military who is assigned to a duty station in California.

This proposed regulatory action will reduce the time period from 10 days to 5 days, for a Limited Permit holder to notify the Board who their employer and supervising occupational therapist are, or when there is a change in employer and/or supervisor. This proposed regulatory action will establish the Board shall not deny a limited permit to an applicant that has met all requirements for licensure in situations where the college or university is unable to issue an official transcript in a prompt or timely manner, due to no fault of the applicant. This

proposed regulatory action makes several minor technical edits by eliminating obsolete references to occupational therapy assistants being "certified," deleting unnecessary language or acronyms, and adding the title and form number of the Board's application for licensure to section 4110.

This proposed regulatory action also seeks to clarify and make specific the effective date of a license renewed delinquently and clarifies, updates, and makes technical amendments to the provisions for placing a license on inactive status, and for activating an inactive license.

Anticipated Benefits of Proposal

The proposed regulations implement, clarify, and establish rules pertaining to recent legislation (AB 1588 and AB 1904) to provide for a temporary license renewal waiver to occupational therapy practitioners that are on active duty with the military and provide expedited license application processing for any spouse that is married to, or in a legal union with, an active duty member of the military that is serving in California. This proposed regulation extends consideration and appropriate allowances to those serving on active duty in the military and their spouses in appreciation of their service to the country.

The proposed regulatory action reduces any barrier to issue a limited permit to an applicant due to the applicant's qualifying degree program being unable to issue an official transcript to the Board (required for issuance of a license) in a timely manner. The proposed regulatory action enhances and promotes public safety by establishing a narrower time period for limited permit holders to notify the Board of their employer and supervisors and any subsequent changes.

The proposed regulatory action will reduce or eliminate illegal and unauthorized practice in situations where a licensee renews their license delinquently. It also provides clarity and specific direction to licensees to restore an inactive license to active status.

Consistency and Compatibility with Existing State Regulations

This regulatory proposal is consistent and compatible with existing state regulations.

Documents Incorporated by Reference: Initial Application for Licensure, Form ILA, Rev 8/2012

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS

Impact on Jobs/New Business:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulatory action will benefit individuals who are serving on active duty in the Armed Forces by providing a temporary license renewal exemption and for expedited licensing of spouse of an individual that is serving on active duty in California. The proposed regulatory action will benefit applicants that have met the requirements for licensure by allowing the Board to issue a limited permit in situations when the applicant's college or university cannot issue an official transcript (a requirement to issue a license) in a timely manner to allow them to practice as limited permit holder until a license can be issued, thus eliminating a barrier to practice. The proposed regulatory action clarifies rules, processes, and procedures, relating to providing the Board notice of changes in supervision and employment of limited permit holders, the effective date of delinquent license renewals, and activating an inactive license to enhance and promote the Board's administration of its licensing, regulatory and disciplinary functions.

Cost Impact on Affected Private Persons:

The Board has determined that this regulatory proposal will not adversely impact affected private persons (licensed occupational therapy practitioners and applicants). The proposed regulations do not establish any additional costs to affected private persons and actually provides a cost savings to a licensee who is, or was, on active duty with the military by exempting them from paying any delinquent renewal fees as prescribed in the proposed regulation.

Effect on Housing Costs: None

Effect on Small Business:

The Board has made an initial determination that the proposed regulatory action would have no statewide adverse economic impact on small business. The proposed regulatory action does not implement any new fees that would be imposed on occupational therapy practitioners or any employers. The proposed regulatory action is administrative in nature and is designed to implement or update processes and procedures to promote and enhance administration of the Board's licensing, regulatory, and disciplinary functions.

CONSIDERATION OF ALTERNATIVES

The CBOT must determine that no reasonable alternative considered it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to the private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
[Same contact information as above]

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > Laws and Regulations > Proposed Regulations.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
PROPOSED MODIFIED REGULATORY LANGUAGE
Title 16, Division 39, California Code of Regulations

Specific Language

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

a. Section 4110, Article 2, is amended to read as follows:

§ 4110. Application

(a) An application for a license~~, certificate,~~ or limited permit shall be submitted on the form entitled Initial Application for Licensure, Form ILA, Rev. 8/2012), hereby incorporated by reference, and shall contain the information required by sections 30, 144, 851, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16 of the Code and Family Code section 17520, accompanied by the appropriate fees.
(b) For an applicant applying for licensure pursuant to section 2570.15 of the Code, "substantially equal" means that the applicant has successfully completed the academic requirements of an educational program, including the educational program and supervised fieldwork requirements, for an occupational therapist or an occupational therapy assistant that are approved by the board and approved by the foreign credentialing review process of the National Board of Certification in Occupational Therapy ~~(NBCOT)~~, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 30, 144, 850, 851, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, 2570.15 and 2570.16, Business and Professions Code; and Section 17520, Family Code.

b. Section 4112, Article 2, is amended to read as follows:

§ 4112. Review of Application

(a) Within thirty (30) days after receipt of an application for a license~~, certificate,~~ or limited permit, the board shall inform the applicant, in writing, whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.
(b) Within ten (10) days after receipt of an application for a license submitted by an applicant that is:
(1) Married to, or in a domestic partnership or other legal union with an active duty member of the military who is assigned to a duty station in California, and
(2) Holds a current, unrestricted, occupational therapist or occupational therapy assistant license, certificate or registration issued by another state, district, or territory of the United States,

the board shall inform the applicant, in writing, whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 115.5, 144, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16, Business and Professions Code and Section 15376, Government Code.

c. Section 4120, Article 3, is amended to read as follows:

§ 4120. Renewal of License ~~or Certificate~~ – Forms

(a) The term of a license ~~or certificate~~ shall be two years.
(1) Unless renewed, a license ~~or certificate~~ issued by the board shall expire at 12 midnight on the last day of the holder's birth month during an odd year if the licensee was born in an odd year or during an even year, if the licensee was born in an even year. The initial license fee shall be prorated from the month of issuance based on the holder's birth month and birth year.
(2) To renew an unexpired license ~~or certificate~~, the holder shall, before the time at which the license ~~or certificate~~ would otherwise expire, apply for renewal, pay the renewal fee, and certify that the licensee's ~~or certificate holder's~~ representations on the renewal form are true, correct, and contain no material omissions of fact, signed under penalty of perjury.
(3) The renewal application shall include a statement specifying whether the licensee ~~or certificate holder~~ was convicted of a crime or disciplined by another public agency during the preceding renewal period, and whether the continuing competency requirements have been met if renewing in an active status.
(4) For a license ~~or certificate~~ that expires on or after July 1, 2010, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license ~~or certificate~~ is grounds for discipline by the board. It shall be certified on the renewal form whether the fingerprints have been submitted. This requirement is waived if the license ~~or certificate~~ is renewed in an inactive status, or the licensee or certificate holder is actively serving in the military outside the country.
(5) An inactive license ~~or certificate~~ may be renewed.
(6) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.
(b) A limited permit cannot be renewed.
(c) Licensees who possess a current and valid license and who are called to active duty as a member of the United States Armed Forces or the California National Guard do not have to:

(1) Pay the renewal fee set forth in section 4130; or
(2) Complete the continuing competency requirements set forth in section 4161. These requirements are waived only during the period in which the licensee is on active duty service.
(d) Licensees may not engage in the practice of occupational therapy during the period of active duty service and renewal waiver unless he or she wishes to practice, at which time the licensee shall request the license be placed on military active status. A licensee whose license is on military active status may practice occupational therapy but shall not engage in private practice.
(e) Licensees who are on active duty service must notify the board, in writing, within 60 days of his or her notice of discharge.
(f) In order to activate their license, the licensee must meet all necessary renewal requirements within six (6) months from the licensee's discharge from active duty service, including the requirements of sections 4130 and 4161.

Note: Authority cited: Sections 134, 152.6, 462, and 2570.20, Business and Professions Code. Reference: Sections 114.3, 134, 152.6, 462, 2570.5, 2570.9, 2570.10, and 2570.11, Business and Professions Code.

d. Section 4121, Article 3, is amended to read as follows:

§ 4121. Renewal of Expired License ~~or Certificate~~; Application; Fees; Effective Date of Renewal

(a) Except as otherwise provide in the Code, a license ~~or certificate~~ which has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of all accrued and unpaid renewal fees. If a license ~~or certificate~~ is renewed after its expiration, the licensee ~~or certificate holder~~, as a condition precedent to renewal, shall also pay a delinquency fee. Renewal under this section shall be effective on the date on which the application is ~~filed~~ received by the Board, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license ~~or certificate~~ shall continue in effect through the expiration date provided in section 4120, ~~above which next occurs after the effective date of renewal, when it~~ at which time, it shall expire if it is not renewed.
(b) This section shall not apply to licensees who are on active duty service as a member of the United States Armed Forces or the California National Guard.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 114.3, 163.5, 2570.9, and 2570.10, Business and Professions Code.

e. Section 4123, Article 3, is amended to read as follows:

§ 4123. Limited Permit

(a) To qualify for a limited permit, a person must have applied to the National Board for Certification in Occupational Therapy (NBCOT) to take the licensing examination within four (4) months of completing the education and fieldwork requirements for licensure or certification and request NBCOT provide their examination score report be forwarded to the Board.
(1) Upon receipt from NBCOT, the applicant must forward to the Board a copy of the Authorization to Test (ATT) letter.
(2) The applicant must provide documentation or other evidence to the Board, to prove that the applicant requested their examination score be sent from NBCOT to the Board, before a limited permit may be issued.
(3) A limited permit shall only be valid for three (3) months from the date of issuance by the Board, upon receipt of a failing result, or two (2) weeks following the expiration of the applicants' eligibility to test period, whichever occurs first.
(4) The limited permit holder must immediately notify the Board of the results of the examination.
(5) The limited permit holder must provide to the Board the name, address and telephone number of his or her employer and the name and license number of his or her supervising occupational therapist (OT). Any change of employer or supervising OT must be provided to the Board, in writing, within ~~10~~ five (5) days of the change.
(b) A limited permit shall not be denied to an applicant that has completed the fingerprint, education, and examination requirements, yet is unable to provide transcripts due to the college or university's inability to make the transcripts available to the student or the Board in a timely manner. A limited permit issued pursuant to this section shall only be valid for three (3) months from the date of issuance by the Board.
~~(b)~~ (c) The limited permit will be cancelled, and the fee forfeited, upon notification to the Board or the limited permit holder by the test administrator that the holder failed to pass the first examination.

Note: Authority cited: Sections 2570.5 and 2570.20, Business and Professions Code. Reference: Sections 2570.5, 2570.6, 2570.7, 2570.9, 2570.16 and 2570.26, Business and Professions Code; and Sections 4100, 4102, 4110, 4111, 4112, 4114, 4120 and 4130, California Code of Regulations.

f. Section 4127, Article 3.5, is amended to read as follows:

§ 4127. Inactive Status

(The renumbering of Section 4127 (formerly Section 4122) is part of a pending rulemaking action-reference: Z-202-0814-22)

Upon written request, the board may grant inactive status to a license ~~or certificate~~ holder under the following conditions:
(a) At the time of application for inactive status, the holder's license ~~or certificate~~ shall be current and not suspended, revoked, or otherwise punitively restricted by the board.
(b) The holder of an inactive license ~~or certificate~~ shall not engage in any activity for which a license ~~or certificate~~ is required.
(c) An inactive license ~~or certificate~~ shall be renewed during the same time period in which an active license or certificate is renewed. The holder of an inactive license ~~or certificate~~ need not comply with any continuing education requirement for renewal of an active license.
(d) The renewal fee for a license ~~or certificate~~ in an active status shall apply also for a renewal of a license ~~or certificate~~ in an inactive status, unless a lesser renewal fee is specified by the board.
(e) In order for the holder of an inactive license ~~or certificate~~ to restore his or her license ~~or certificate~~ to an active status, he or she shall comply with all of the following:
(1) Pay<u>s</u> the renewal fee.
(2) ~~If the board requires completion of continuing education for renewal of an active license,~~ <u>Provides proof of completion of</u> ~~complete~~ continuing education equivalent to that required for a single renewal period of an active license<u>, pursuant to Section 4161</u> ~~or certificate, unless a different requirement is specified by the board on a case-by-case basis~~.

Note: Authority cited: Sections 462, 700, 701, and 2570.20, Business and Professions Code. Reference: Sections 462, 700, 701, and 2570.11, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Regulations pertaining to Applications, Application Review Requirements, Military Exemptions, Renewals, Delinquent Renewals, Limited Permits, and Inactive Status

Sections Affected: Title 16, Division 39, California Code of Regulation (CCR) Sections 4110, 4112, 4120, 4121, 4123, and 4127

Introduction:
The California Board of Occupational Therapy (Board) is the state governmental agency that licenses occupational therapy practitioners and regulates the practice of occupational therapy. The Board administers, coordinates, and enforces provisions of the Occupational Therapy Practice Act. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California consumers.

This proposed action will establish rules for a temporary waiver of license renewal fees and professional development requirements for occupational therapy practitioners who are on active duty in the military. This proposed action seeks to establish expedited license application processing for an applicant who is the spouse of an individual that is serving on active duty who is stationed in California. This proposed action seeks to establish a policy that the Board can issue a Limited Permit to an applicant who has met all requirements for licensure but whose educational institution is unable to issue an official transcript in a timely manner thereby delaying licensure. This proposed action will clarify when a delinquent license renewal becomes effective, makes several minor technical edits to delete language that is obsolete, and adds language to identity the title and form number of Board's application for licensure to conform to state requirements.

Specific Purpose of each adoption, amendment or repeal:

AMEND CCR SECTION 4110 – APPLICATION

The existing regulation establishes and clarifies that an application for licensure must be submitted by an individual who seeks licensure. This proposed action will delete reference to term "certificate" and adds language to identify the title and form number of the Board's application for licensure. It also makes a minor technical edit to delete the acronym "NBCOT" for National Board for Certification in Occupational Therapy from the language, as unnecessary.

The Board seeks these amendments because SB 821 (Chapter 307, Statutes 2009) specified that occupational therapy assistants shall be referred to as "licensed" not "certified." Thus the Board is seeking to eliminate the old and obsolete reference to "certification" and align the regulatory language with that used in statute. The Board is

adding the title and form number of its application for licensure to conform with state regulatory requirements under Title 1, CCR 20(c)(4). The Board is seeking to eliminate the acronym "NBCOT" from the section since there is only a single reference to the National Board for Certification in Occupational Therapy in the section.

The anticipated benefit of this regulatory action is to bring clarity and consistency in the way occupational therapy assistant practitioners are referenced in regulation and statute. It also serves to clearly identify the title and form number of the Board's application for licensure to conform to state requirements and makes a minor technical edit to delete an unnecessary acronym from the section.

AMEND CCR SECTION 4112 – REVIEW OF APPLICATION

The existing regulation establishes that within 30-days of receipt of an application for licensure, staff shall notify an applicant, in writing, whether their application is complete or deficient. This proposed action will establish a process for expediting a license application for an applicant who holds a current occupational therapy license in another state that is in a legal union with an active duty member of the Armed Forces who is stationed in California. This proposed action will establish that applicants in a legal union with an active duty member who is stationed in California shall receive written notice whether their application is complete or deficient within 10-days of receipt of the application in the Board's office. This proposed action does not waive any other application requirements, including but not limited to, the transcript, background check, verification of the standing of other state licenses held, and verification of passing the national examination.

The Board seeks these amendments to establish rules and procedures to implement new legislation, AB 1904 (Chapter 399, Statutes 2012).

The anticipated benefit of this regulatory action is to reduce the application processing timeframe and any barrier to practice for an applicant whose spouse has called to active duty in the Armed Forces in California in support and recognition of their spouse's service.

AMEND CCR SECTION 4120 – RENEWAL OF A LICENSE

Existing regulations establish rules for the renewal of a license and indicates when a license expires. This proposed action deletes all references to "certificate" and "certificate holder" since occupational therapy assistants are no longer referred to as being "certified" and are considered "licensed". This proposed action will establish rules for the temporary waiver of license renewal requirements for a licensee who is serving on active duty in the Armed Forces, Reserves, or National Guard (further only referred to as Armed Forces) when the license expires. This proposed action is not meant or intended in any way to circumvent licensure laws that are designed for public protection. Language contained in this proposed action establishes and clarifies that during the period the license renewal requirement is temporarily being waived the licensee is prohibited from providing services to the public. However, a licensee whose renewal requirement is being temporarily waived for active duty service may request that he or

she be granted "military active" status by the Board for the limited purpose of only rendering occupational therapy services to Armed Forces personnel and their families. This proposed action will establish that a licensee keep the Board apprised of his or her status and provide the Board notice, in writing, within 60-days days of his or her notice of discharge. Since the purpose and design of this proposed action is to provide a temporary waiver of renewal requirements while a licensee is serving on active duty it is necessity to establish a timeframe for the licensee to renew the license after their discharge. Therefore language contained in the proposed action establishes that a licensee must pay the biennial renewal fee and complete the continuing competency requirements required for active renewal within 6 months of their discharge. Any practitioner that missed the 6 month deadline would then subject their license to delinquent renewal fee penalties just as other practitioners are subject if they renew delinquently.

The Board seeks these amendments to establish rules and procedures for implementing new legislation AB 1588 (Chapter 742, Statutes 2012).

The anticipated benefit of this regulatory action is to provide support, recognition, and demonstrate appreciation of those who serve in the Armed Forces who protect our freedom and way of life. This regulatory action implements appropriate allowances and considerations for licensees and spouses who are serving on active duty.

AMEND CCR SECTION 4121 – RENEWAL OF EXPIRED LICENSE, APPLICATION; FEES; EFFECTIVE DATE

Existing regulations establish rules relating to the renewal of an expired license which includes, but is not limited to, assessment of a delinquent fee. This proposed action deletes all references to "certificate" and "certificate holder" since occupational therapy assistants are no longer referred to as being "certified" and are considered "licensed". This proposed regulatory action will also clarify that the effective date of a delinquent renewal shall be when the Board "receives" a complete renewal application (practitioner answers conviction/discipline statement, verifies completion of continuing competence requirement, and submits delinquent and renewal fees) as opposed to when it was "filed" or mailed. This clarification is necessary because in many instances delinquent renewal applications are incomplete and in rare circumstances practitioners have claimed the renewal application had been lost by the postal service. This proposed regulation is designed to eliminate any inference that a practitioner may resume practice upon filing or mailing a renewal application and until Board staff can verify that all requirements for delinquent renewal have been met. This proposed action will provide an exemption from paying the delinquent renewal fee for a license that expired while the practitioner was on active duty in the Armed Forces as long as the licensee reactivates (applies and pays license renewal fee and meets all renewal requirements) the license within six months of his or her discharge from active duty consistent with proposed CCR Section 4120(f).

The Board seeks these amendments to establish rules and procedures for implementing new legislation AB 1588 (Chapter 742, Statutes 2012) and to clarify when a delinquent renewal becomes effective and the licensee may resume practice.

The anticipated benefit of this regulatory action is to provide support, recognition, and demonstrate appreciation for those serving in the Armed Forces who protect our freedom and way of life. Amendments contained in this proposed regulatory are designed to eliminate any premature resumption of practice until it can be verified all delinquent renewal requirements have been met.

AMEND CCR SECTION 4123 – LIMITED PERMIT

Existing regulations establish rules for qualifying for a limited permit and provide parameters for notifying the Board of any change in a permit holder's employer and/or supervisor. This proposed regulatory action amends existing regulations to require a permit holder to notify the Board of any change in employer and/or supervisor with five (5) days as opposed to the ten (10) days. This proposed regulatory action will also establish that the Board may issue a limited permit for a period of three (3) months to an applicant who has fulfilled the education, fingerprint, and examination requirements to qualify for issuance of a license, but through no fault of their own the occupational therapy degree program is unable to produce an official transcript in a timely manner thereby delaying licensure.

Since limited permit holders are unlicensed and require supervision from a licensed occupational therapist the Board believes it is more appropriate to receive notice of any change in supervisor and/or employment in a more expeditious manner to support and facilitate its public protection mandate. The rationale for seeking the ability to issue a limited permit to applicant who has met all requirements for licensure is to eliminate any unnecessary barrier to practice due to a technicality beyond the applicant's control. Due to budget cuts at various California educational institutions many graduates of occupational therapy degree programs have experienced delays in the issuance of official transcripts due to the lack of resources and diminished staffing. Since it can be established that all requirements for licensure have been met, barring the issuance of an official transcript, the Board seeks this proposed action to allow affected applicant's the ability to gain employment until an official transcript cab be produced. Applicants granted a limited permit under this proposed action would still be obligated to provide services under the supervision of a licensed occupational therapist.

The anticipated benefit of this regulatory action is enhanced consumer protection and to eliminate a barrier to practice for applicants who have met all requirements for licensure whose educational institutions are unable to produce an official transcript in a timely manner.

AMEND CCR SECTION 4127 – INACTIVE STATUS

(The renumbering of Section 4127 (formerly Section 4122) is part of a pending rulemaking action-reference: Z-202-0814-22)

Existing regulations establish rules for placing a license on inactive status and provides rules for activating an inactive license. This proposed action deletes all references to "certificate" from the language since occupational therapy assistants are no longer referred to as being "certified" and are considered "licensed". The Board is proposing a

minor technical edit by striking existing reference to "Pay" and replacing it with "Pays" in Section 4127(d)(1) to make it read better. Since the Board has implemented a continuing education requirement (continuing competence requirement) for renewing a license, language in Section 4127(d)(2) needs updating. Thus existing language "If the board requires completion of continuing education for renewal of an active license" is being eliminated and replaced with language indicating continuing education is a requirement for activating a license. The Board also seeks to eliminate confusing language that appears to establish it may establish a different continuing education requirement on a case by case basis. Since the Board has never had a situation where it needed to establish a continuing education requirement on a case by case basis and doing so could be considered as unfair, it seeks to eliminate this language.

The anticipate benefit of this regulatory action is to bring clarity to the rules and requirements for inactive status and activation of a license.

DOCUMENTS INCORPORATED BY REFERENCE:

- Initial Application for Licensure (Form ILA, Rev 8/12)

UNDERLYING DATA:

None

FISCAL IMPACT IN GENERAL:

This proposed regulatory action will not have a significant adverse economic impact on business.

This proposed regulatory action will not have an adverse economic impact on affected individuals (licensees and applicants who fall under the Board's jurisdiction) who comply with the laws, regulations, and standards of occupational therapy practice.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

Background

This proposed regulatory action is designed to provide temporary financial relief to practitioners who are serving on active duty in the military when their license expires. It also will establish an expedited application license review process for the spouse of any individual that is serving on active duty who is stationed in California reducing any barrier to practice. This proposed regulatory action also seeks to allow the Board to issue a limited permit to an applicant who has met the education and examination requirements for licensure in situations where his or her educational institution cannot produce an official transcript in a timely manner delaying licensure thus creating an unnecessary barrier to practice.

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate a significant number of jobs within California. Components of this regulatory are designed to promote jobs and eliminate unnecessary barriers.

Creation of New Business or Elimination of Existing Business Within California

The Board has determined the proposed regulatory action will not create new business or eliminate existing business within California.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California.

Benefits of Regulations

This proposed regulatory action provides for a temporary waiver of license renewal requirements for licensees who are serving on active duty in the Armed Forces in recognition and appreciation of their service. This proposed regulatory action also reduces or eliminates delays in the initial licensing process for the spouse of an individual that is serving on active military duty in California due to the spouse's displacement and in appreciation and support of their spouse's service.

This proposed regulatory action reduces or eliminates a barrier to practice for applicants for licensure that have met the educational and examination requirements for licensure by allowing the Board to issue a limited permit in situations where the applicant's educational institution is unable to produce an official transcript in a timely manner.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is being proposed or would be less burdensome to affected private persons and business than the proposed regulations.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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last part of 8

MEMORANDUM

DATE	**August 29, 2013**
TO	**Executive Officers, Executive Directors, Registrars & Bureau Chiefs**
FROM	Denise Brown **DENISE BROWN, Director** **Department of Consumer Affairs**
SUBJECT	**Implementation of AB 1588**

Last year, Assembly Bill 1588 (Atkins, ch. 742, Stats. of 2012) added Section 114.3 to the Business and Professions Code ("Section 114.3"). Section 114.3 allows a licensee to receive a waiver from renewal requirements if the licensee is called to active military duty. Over the past few months, the Department has received a number of inquiries from some of its boards and bureaus ("programs"), other state agencies, and the Legislature regarding the implementation of Section 114.3. This memo attempts to address some general implementation issues and to provide background on the Department's current efforts.

THE LAW

Reinstatement v. Renewal Waiver

Prior to the enactment of Section 114.3, only Section 114 of the Business and Professions Code addressed licensees serving in the military ("service members"). Section 114 forgives delinquency penalties associated with the reinstatement of licenses that expired while a service member was *on* active duty, while Section 114.3 provides licensees *called to* active duty with a renewal option (emphasis added).

The law is silent as to whether licensees who wish to avail themselves of the Section 114.3 renewal waiver must do so at the time of renewal, or may do so retroactively upon discharge.

Note that those called-up service members who make a retroactive renewal waiver request upon discharge will be situated much like service members seeking reinstatement after a license expired while on active duty. The way in which programs choose to characterize these retroactive requests is particularly important. Renewal waivers under Section 114.3 only require that a service member meet certain renewal requirements. Reinstatements under Section 114, however, give programs the discretion to require a service member who did not practice the profession while on active duty to pass an

examination (Section 114(c)). Additionally, if a retroactive Section 114.3 renewal waiver is granted, no lapse should then appear in that service member's licensure.

Each program will have to determine how to approach this issue in light of public protection, given the types of requests each program receives and practical limitations on what may be expected of service members while on active duty.

Programs Subject to Section 114.3

The renewal waiver scheme set forth in Section 114.3 does not apply to any program that has a similar statutorily authorized renewal waiver process. Some examples of programs that already have similar military renewal laws include the Accountancy Board, the Medical Board, and the Board of Podiatric Medicine. Many programs already have regulations that provide waivers for particular renewal requirements in situations like a licensee's absence due to military service, residence in another country, or disability. These programs do not qualify for exemption from the applicability of Section 114.3, as the similar license renewal waiver process must be set forth in statute (Section 114.3(f)).

"Called to Active Duty"

Service members may only avail themselves of the Section 114.3 military renewal waiver if "called to active duty" (Section 114.3(a)). Legislative notes indicate that Section 114.3 presupposes a service member's temporary change in lifestyle and circumstance whereby the fulfillment of renewal requirements like continuing education ("CE") and the submittal of fees would be near impossible. The waiver applies equally to those reservists called up to active duty, or to career active duty military personnel that are ordered to a change in circumstance. Not all career military licensees that fall under the broader definition of 'active' military by working full time, then, would be eligible for the waiver. Only career active-duty licensees that have a temporary change in assignment to a remote location in order to perform a military task would qualify for the waiver. Conversely, those military personnel that have orders to serve in a permanent, career position at a base are not "called to active duty" within the meaning of the exemption.

Note that similar language is not used in Section 114, which simply requires that a service member be on active duty to avail themselves of that section's reinstatement process. The granting of military renewal waivers, however, should be reserved for what is commonly referred to as a "TDY" or temporary duty assignment.

Waiver of Renewal Requirements

Section 114.3 requires that programs "...shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board" for those licensees called to active duty (Section 114.3(a)). This means that waiver of the renewal obligations at issue is permanent and is not paused, tolled, or accrued while the service member is away. These obligations are permanently forgiven. For temporary duty assignments that span an entire renewal period, no CE or renewal fees should be due.

This interpretation is supported by the Assembly Committee on Appropriations dated March 28, 2012 on this bill, which estimated that the revenue loss resulting from the fee

waivers made under Section 114.3 would be anywhere from $150,000 to $500,000 annually. This suggests that the Legislature's intention was that these waivers be permanent. Conversations with the author of this bill also support this interpretation.

Programs will have to determine how renewal requirements should be waived when a service member returns from a temporary duty assignment mid-renewal cycle. Some options include doing a straight proration of CE and renewal fees based on the number of months a service member is away. Another option is to do a modified proration whereby certain units are waived depending on where a service member's discharge date falls into specific cutoff periods. Programs that have specific course requirements for CE may wish to require the completion of those courses only.

The possible permutations of modified renewal responsibilities are too numerous to discuss at length for purposes of this memo. Each program is encouraged to meet with its respective counsel when determining how to approach the issues raised here, taking into account the unique nature of each program's renewal requirements.

Upon Discharge

A licensee who has renewed under a military waiver and who has been discharged from active duty and returned home may wish to exist in a military waiver status until the next time of renewal, but this means that the licensee may not practice on the public. Or, the licensee may wish to return to a normal, active license status as soon as possible in order to be able to work. Either way, before the licensee may return to an active license status, the service member must fulfill whatever modified requirements exist. Section 114.3(c) states that the service member shall have six months from discharge to fulfill renewal requirements (unless, of course, the licensee would have more time under normal renewal timelines). For service members who return from active duty with less than six months left until the next renewal cycle, this means that the six month grace period will necessarily extend into the beginning of the new renewal cycle.

For example, if a service member is discharged from active duty with three months left until the next renewal cycle, and the service member is responsible for a modified amount of CE (assume 3 units for this hypothetical) the service member will have six months from the date of discharge to fulfill the 3 unit obligation. If the service member does in fact take advantage of the entire six month grace period, this means that the period will extend three months into the new renewal cycle. Assuming all other conditions for renewal are met at the end of the grace period, the service member will then have an active, current license, will be able to practice on the California public, and will have 21 months left in that 24-month renewal cycle. During the latter renewal cycle, the service member will be responsible for the full amount of CE, fees, and other requirements in order to renew again.

Consider, on the other hand, a service member who has renewed in military waiver status and is discharged with, for example, 18 months left until the next renewal cycle. The service member will, by virtue of the regular renewal cycle timeline, have 18 months to

fulfill a modified CE obligation, which is longer than the six-month grace period provided by statute, provided the service member does not resume active practice in California.

Documentation of Being Called to Active Duty
Section 114.3(a)(3) requires that service members provide programs with written documentation substantiating the active duty service in order to avail themselves of the Section 114.3 renewal waiver. If your program has particular requirements for acceptable documentation (*e.g.* orders from a commanding officer versus a signed statement from the service member), these requirements must be specified in regulation.

Regulatory Changes
As mentioned above, programs' determinations on how to implement Section 114.3 may necessitate regulation. Programs are encouraged to meet with their respective counsel in making these determinations. Some factors to consider in determining if and what regulations are necessary are (1) what the program's historical practice has been in providing military renewal waivers under a general waiver regulation, if one exists; (2) program requirements for converting an inactive license into an active status, and whether similar requirements are appropriate for Section 114.3 modified renewal requirements; (3) any renewal requirements particular to that program; (4) effective ways to prevent a licensee's status from going into delinquency while the licensee is serving on active duty; and (5) whether particular forms are necessary to effectuate the program's goals.

OUTREACH & DATA COLLECTION

Outreach to your licensee populations and associations is vital to the successful implementation of Section 114.3.

Website Updates
The Department has placed information on this new law as well as other military legislation on its website. We recommend that you visit the website, as it will be updated. All programs are highly encouraged to provide a link to this webpage on the program's website: http://www.dca.ca.gov/about_dca/military.shtml

This should reduce program workload relating to the development and maintenance of this information (as it is likely that additional information will be necessary should further legislation impacting military personnel be passed). The Department is currently tracking and analyzing 12 pieces of legislation this session relating to the military.

Other Public Outlets - Email Lists/Social Media
In addition, other outreach efforts, such as updating email lists with the new information or mentioning the information on social media outlets, can significantly help. It is important for licensees to understand their options.

Data Collection
The Department has received a number of requests for data and statistics regarding the military, although this is currently unavailable. Pending legislation would require each

program to include a question on an application regarding whether an applicant previously served in the military (AB 1057, Medina).

Keeping track of the number of applications expedited (under AB 1904 – also passed in 2012), the number of waivers issued, etc. would be extremely helpful for the Department with responding to requests regarding the implementation of these new laws and will facilitate any necessary changes in the future. Please provide this information (the number of applications for expedite/waiver and the number of approvals) on a quarterly basis to the Division of Legislative & Policy Review (via Scott Allen – scott.allen@dca.ca.gov).

Military Email
The Department has also created a military email (military@dca.ca.gov) in order to assist in the implementation of the recent military legislation and provide support for each program in dealing with requests that may come to the Department rather than directly to the program. This email will be run through the Consumer Information Center (CIC). This will also assist the Department in tracking information related to military applicants and licensees.

TECHNICAL IMPLEMENTATION

The Department is in the process of transitioning to BreEZe, which precludes any additional changes to the legacy system. Programs not in Release 1 of BreEZe must work within the existing structure of the Consumer Affairs System ("CAS") for the time being. Therefore, the Department is modifying some of its previous suggestions from its December memo to its programs regarding the technical implementation of Section 114.3. The Department also suggests that each program work with their legal counsel to ensure a compliant process is developed.

Effective immediately,

- The Department is no longer suggesting that each program pursue the creation of a "Military Active" or "Military Inactive" status code if one does not already exist for your program at this time.

- Each program, until fully on BreEZe, should use a manual tracking process (Name, License #, Discharge Date, Expiration Date, etc.) for licensees who receive a renewal waiver similar to what is used for AB 1424 for tax debt suspensions.

- If a program has access to the status code "8" AND that status reflects a military designation –status code "8" should be used. If that is not possible, the program is advised to set the license status to "Active" or "Clear." This process should be sufficient in the short term for the majority of licensees seeking a renewal waiver.

- If a licensee has requested the "Military Active" status authorized by the bill and provided sufficient evidence/documentation, the program should keep that licensee as "Active."

- Each program is advised to set a secondary status code for "Military," if one does not currently exist. If you run into issues, contact OIS for assistance. This will also help the program with tracking these licensees. This process will be somewhat similar to what each program has implemented for AB 1424.

- Each program should also modify the automatic renewal flags, such as a renewal notice, from "Y" to "N" in order to avoid triggering other actions, such as switching the license to "Delinquent."

Should you have any further questions in regards to technical implementation requirements please contact the OIS Service Desk at (916) 574-8000 and request to speak with Gerry Lobo.

cc: Gerry Lobo